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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GREG KURDOGLAYAN et al.,

Plaintiffs and Respondents,

v.

AREG BAGHDASSARIANS et al.,

Defendants and Appellants.

B208350

(Los Angeles County
Super. Ct. No. EC046379)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura A. Matz, Judge. Affirmed.

Esquire Law Firm and Victor Hairapetian for Defendants and Appellants.

Law Offices of Eugene S. Alkana and Eugene S. Alkana for Plaintiffs and Respondents.

Plaintiffs Greg Kurdoglayan and SK Vision filed a complaint against defendants alleging claims related to six separate real estate ventures. Defendants Areg Baghdassarians, Angeleno Builders, LLC, and 3810 Ramsdell, LLC moved to compel arbitration of the entire case.¹ The trial court ordered arbitration limited to “the issues arising under the Operating Agreement of 3810 Ramsdell LLC dated January 19, 2006 only.” Baghdassarians appeals from that order. We must decide (1) whether the trial court correctly interpreted the Ramsdell arbitration agreement to encompass only those disputes related to the Ramsdell operating agreement, and (2) whether the trial court correctly found no additional arbitration agreement to encompass any of the remaining disputes. We conclude there was no error and affirm the trial court’s order.

Background

Kurdoglayan filed a complaint against Baghdassarians and other entities asserting claims related to six separate real estate ventures. Although, as Baghdassarians points out, every cause of action except for the seventh is labeled as “Against all defendants,” the substance of each cause of action belies the heading. The first through sixth causes of action relate to four separate real estate ventures, namely Angeleno Builders I, II, III, and V. These causes of action do not mention any other ventures. They are for, in order: (1) fraud, (2) declaratory relief, (3) equitable lien, (4) accounting, (5) constructive trust, and (6) intentional infliction of emotional distress. The seventh cause of action is for intentional interference with economic advantage and relates solely to a North Adams real estate venture. The eighth through tenth causes of action relate to the parties’ Ramsdell real estate venture only. These later causes of action do not mention the Angeleno Builders I, II, III, or V ventures or the North Adams venture. The eighth cause of action is for breach of contract and refers specifically to the written Ramsdell

¹ We refer to plaintiffs and respondents Greg Kurdoglayan and SK Vision as “Kurdoglayan.” We refer to defendants and appellants Areg Baghdassarians and Angeleno Builders, LLC as “Baghdassarians.” Defendant 3810 Ramsdell, LLC is not a party on appeal.

Agreement. The ninth and tenth causes of action allege claims for an accounting and for fraud and are based on the Ramsdell venture only.

Baghdassarians and 3810 Ramsdell, LLC moved to compel arbitration of all claims. In support of the motion, Baghdassarians and 3810 Ramsdell, LLC submitted two declarations from Areg Baghdassarians and one from defendants' attorney. Areg Baghdassarians attached the following documents to his initial declaration: (1) an executed copy of the 3810 Ramsdell, LLC Operating Agreement (the "Ramsdell Agreement"), (2) an executed copy of the Angeleno Builders, LLC Operating Agreement, and (3) unsigned "Operating Agreements" relating to the Angeleno Builders I, II and III ventures (the "unsigned documents").² In his supplemental declaration, Areg Baghdassarians stated that the following companies had executed Operating Agreements, each of which contained an arbitration clause: 3974 Pennsylvania LLC, 3138 Montrose LLC, 2460 Oswego LLC, and 7223 Apperson LLC. He did not attach or otherwise submit copies of those operating agreements, which presumably would have shown, for example, the parties to the agreements and the terms of any arbitration clauses.

In opposition to the motion, Kurdoglayan submitted a declaration from Greg Kurdoglayan as well as a declaration from their attorney. In his declaration, Greg Kurdoglayan elaborated on the proposed structure of the entities that were to be involved in the separate real estate ventures at issue in the complaint.

The trial court granted the motion to compel arbitration as to the Ramsdell Agreement only. Baghdassarians appeals the trial court's order, arguing arbitration should be compelled as to all disputes raised by the complaint, not just those related to the Ramsdell Agreement.

² Areg Baghdassarians also attached an unsigned copy of the "Operating Agreement of Angeleno Builders IV, LLC." This document does not appear relevant.

Discussion

Standards of Review. When there is no factual dispute as to the existence or language of an arbitration agreement, we must determine “the legal interpretation to be given that language and that is something we do de novo.” (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 684.) We review the trial court’s determination as to the existence of an agreement to arbitrate under the substantial evidence standard. (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 357.)

Arbitration of Claims. Code of Civil Procedure section 1281.2 requires the trial court to order arbitration if the court “determines that an agreement to arbitrate the controversy exists [and certain circumstances not relevant here do not exist].” “This language is mandatory, not precatory.” (*Coast Plaza, supra*, 83 Cal.App.4th at p. 687.) Conversely, if no valid agreement to arbitrate exists, the court must deny a motion to compel arbitration. Although the law favors arbitration, “[t]here is no public policy favoring arbitration of disputes which the parties have not agreed to arbitrate.” (*Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653.) “The guiding principle is simple: ‘A party cannot be compelled to arbitrate a dispute that it has not elected to submit to arbitration.’” (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1069, quoting *County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 245.)

The Ramsdell Agreement. There is no dispute that the Ramsdell Agreement contains a valid and enforceable arbitration clause. Rather, the dispute centers on the scope of that arbitration clause. The Ramsdell arbitration clause states: “Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement as between the Company and a Member, or between or among the Members, shall be settled by arbitration in accordance with the provisions of this Agreement.” This language is clear. The agreement to arbitrate extends to (1) any action “to enforce or interpret” the Ramsdell Agreement and (2) any action “to resolve disputes with respect to

[the Ramsdell] Agreement as between the Company and a Member, or between or among the Members.” The trial court correctly compelled arbitration of “the issues arising under the Operating Agreement of 3810 Ramsdell LLC.”

As an initial matter, Baghdassarians appears to misunderstand the trial court’s order. For example, Baghdassarians asserts the trial court “erred when it failed to order plaintiffs’ claims against Angelino Builders, LLC relating to Ramsdell to arbitration.” Elsewhere, Baghdassarians states the trial court compelled “arbitration of all of the nine causes of action involving Ramsdell.” These and similar statements are incorrect. The trial court ordered issues³—not causes of action—arising under the Ramsdell Agreement to arbitration. This includes Ramsdell-related claims against Angelino Builders, LLC, which is a signatory to the Ramsdell Agreement.⁴

To be clear, it is not a question of *who* must go to arbitration, but *what disputes* must be arbitrated. The Ramsdell arbitration clause does not extend to disputes with respect to properties or ventures beyond the Ramsdell Agreement. Baghdassarians cannot use the Ramsdell Agreement to bootstrap into arbitration Kurdoglayan’s claims related to separate real estate ventures. Baghdassarians stretches the language of the Ramsdell arbitration clause to include any and all disputes between members to that Agreement, whether or not the dispute is related to the Ramsdell Agreement. Under Baghdassarians’ logic, any member to the Ramsdell Agreement can compel arbitration of any dispute with another member to that agreement. For example, a member could compel arbitration of a dispute arising from a car accident between members, or, in a less extreme example, a member could compel arbitration of a dispute arising from a separate real estate venture with another member. This latter example is what Baghdassarians attempts to do here. We do not agree with such a broad interpretation of the Ramsdell Agreement.

³ We interpret the word “issues” as used by the trial court to be the equivalent of the word “disputes” as used in the Ramsdell arbitration clause.

⁴ We assume “Angelino Builders, LLC” and “Angelino Builders, LLC” are one and the same. The parties have not told us otherwise.

Cases cited by Baghdassarians do not support a different result. For example, Baghdassarians cites *Cara's Notions, Inc. v. Hallmark Cards, Inc.* (4th Cir. 1998) 140 F.3d 566, in which the Fourth Circuit reversed an order refusing to compel arbitration. The *Cara's Notions* arbitration clause encompassed “[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, *or any aspects of the relationship between Hallmark and [the plaintiff], or the termination thereof.*” (*Id.* at p. 568, italics in original, fn. omitted.) Because the *Cara's Notions* arbitration clause is much broader than the one at issue here, that case is beside the point. Other courts have distinguished *Cara's Notions* for this very reason. (See, e.g., *Wachovia Bank, Nat. Ass'n. v. Schmidt* (4th Cir. 2006) 445 F.3d 762, 769; *Security Watch, Inc. v. Sentinel Systems, Inc.* (6th Cir. 1999) 176 F.3d 369, 374, fn. 4.)

The Angeleno Builders, LLC Agreement. The only other signed agreement in the record is the Angeleno Builders, LLC Agreement. Armond Bagdasarian and Areg Baghdassarians are the sole signatories to that agreement.

But, again stretching language beyond logic, Baghdassarians argues that, in paragraph 20 of the complaint, Greg Kurdoglayan has unilaterally made himself a party to the Angeleno Builders, LLC Agreement. Even if the complaint is not a model of precise pleading, we cannot accept this argument. Under Baghdassarians' logic, when someone wants to arbitrate a claim, that person or entity could simply file a verified document declaring themselves a party to the relevant arbitration agreement. The law does not support this argument. The arbitration provision in the Angeleno Builders, LLC Agreement does not apply here.

The Unsigned Documents. In addition to the Ramsdell Agreement and Angeleno Builders, LLC Agreement, Baghdassarians attached four unexecuted documents to the motion to compel. Standing alone, these unsigned documents are unenforceable. Similarly, they are unhelpful in determining the parties' intent to arbitrate. Baghdassarians argues the unsigned documents indicate that the parties intended to arbitrate. Without more, however, the fact that the documents are unsigned could just as easily indicate disagreement with the terms (including the arbitration clauses) of the

proposed agreements. Baghdassarians fails to demonstrate—through declarations in support of the motion to compel or otherwise—how or why the arbitration provisions in those documents should be enforced. Because Baghdassarians failed to ask the trial court for an evidentiary hearing on these issues, Baghdassarians cannot now ask us to order such a hearing. (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486.) We agree with the trial court that Baghdassarians has not demonstrated the existence of any agreement to arbitrate disputes unrelated to the Ramsdell Agreement.

Our decision is consistent with *Marsch v. Williams* (1994) 23 Cal.App.4th 250, a case neither side cites. In *Marsch*, the parties had executed various agreements—the La Jolla agreements and the Horizon agreement—which controlled the operation of separate real estate developments. Only the Horizon agreement contained an arbitration clause. The complaint made reference to both the La Jolla agreements and the Horizon agreement, but sought damages based only on the La Jolla agreements, that is, the agreements without arbitration clauses. The defendant Williams moved to compel arbitration, arguing that “by relying on Williams’s conduct in Horizon to establish portions of his La Jolla case, Marsch’s complaint had its ‘roots in the relationship created by the Horizon [agreement]’ and was controlled by the arbitration clause in that agreement.” (*Id.* at p. 253.) The court disagreed, noting that the La Jolla agreements and the Horizon agreement “were not closely connected in purpose, did not incorporate one another’s terms, were not executed at the same time, and the breach of [one] did not necessarily lead to the breach of the [other].” (*Id.* at p. 256.)

Similar to the defendant in *Marsch*, Baghdassarians argues that, although Kurdoglayan’s claims arise from and relate to various different real estate ventures, some of which do not involve valid arbitration agreements, the claims should all be arbitrated under the Ramsdell arbitration clause because they are “intertwined,” “entangled,” and involve the same parties. But, as the *Marsch* court held in similar circumstances, when “the parties have separate contractual relationships, which involve separate enterprises and most importantly separate commercial risks, an arbitration clause which governs one contractual relationship cannot be imposed in the other relationship without undermining

the parties' reasonable expectations.” (*Marsch v. Williams, supra*, 23 Cal.App.4th at p. 256.)

Baghdassarians also argues that arbitration clauses in the unsigned documents should be enforced because Kurdoglayan relies on other portions of those same unsigned documents to support the complaint. Baghdassarians argues that Kurdoglayan cannot reject a portion of an agreement, while simultaneously embracing other portions. We are not persuaded. Kurdoglayan does not specifically rely on or mention the unsigned documents for any claim. In fact, as to the Angeleno Builders I, II, III and V disputes, Kurdoglayan does not assert a breach of contract claim. The only breach of contract claim is based on and relates to the Ramsdell Agreement.

None of Baghdassarians' remaining arguments changes our analysis. For example, we are not persuaded by arguments based on equitable estoppel or the rights of nonsignatories and third party beneficiaries. Such arguments are only relevant once it is shown that a valid arbitration agreement (1) exists between the parties and (2) encompasses the disputes at issue. Here, the Ramsdell Agreement contains the only valid arbitration agreement between the parties. And, as explained above, that arbitration agreement is limited in scope.

Baghdassarians also argues that tort claims may be arbitrated. While we do not disagree with this point, it does not change our analysis. First, in ordering “the issues arising under the Operating Agreement of 3810 Ramsdell LLC” to arbitration, the trial court did not distinguish between contract and tort claims. The requirement for arbitration here is that the claims be related to the Ramsdell Agreement. Second, to the extent Baghdassarians is using this “torts may be arbitrated” argument to sweep all claims raised in the complaint into arbitration, he cannot do so. As explained above, only those disputes related to the Ramsdell Agreement may be arbitrated.

Finally, in further support of his “torts may be arbitrated” argument, Baghdassarians relies on *Segal v. Silberstein* (2007) 156 Cal.App.4th 627. *Segal* does not support Baghdassarians’ position. First, *Segal* is factually different. In *Segal*, Division 8 of this Court reversed the trial court’s order denying arbitration “[b]ecause the operating agreements of the parties’ business entities require[d] arbitration.” (*Id.* at p. 629.) In support of their motion to compel arbitration, defendants in *Segal* presented three signed agreements, each of which contained an arbitration provision. In contrast, here, Baghdassarians presented multiple unsigned documents, and only one signed agreement that does not cover all the disputes raised by the complaint.

Second, *Segal* does not address the issue we confront here, namely whether a court may compel arbitration of disputes not related to the agreement in which the arbitration clause is contained. In *Segal*, the Court addressed (1) the import of language found in the arbitration provisions designating arbitration as a “nonexclusive” dispute resolution process outside of Texas, (2) whether one of the signed agreements applied even though the entity created by that agreement was not a party to the lawsuit, (3) whether a separately pending action involving one of the *Segal* plaintiffs barred arbitration of the *Segal* claims under Code of Civil Procedure section 1281.2(c), and (4) whether that plaintiff had waived his right to arbitration by appearing in the other action. *Segal v. Silberstein, supra*, 156 Cal.App.4th at p. 632.) The Court’s analysis of those issues does not inform our decision here.

Disposition

The Ramsdell Agreement contains the only enforceable arbitration agreement between the parties. That agreement requires arbitration of “disputes with respect to [the Ramsdell] Agreement.” The Ramsdell arbitration agreement does not extend to other disputes between the parties. The record does not reveal evidence of any other arbitration

agreement between the parties. Accordingly, we affirm the trial court's order compelling arbitration of disputes relating to the Ramsdell Agreement only.

NOT TO BE PUBLISHED.

BAUER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.